SUPREME COURT, U. S.

FILED

MAY 14 1969

JOHN F. DAVIS, CLERK

No. 1112

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

WILLIAM LEIGHTON, a stockholder of The One William Street Fund, Inc. for himself and all stockholders of The One William Street Fund, Inc. similarly situated and for and on behalf of The One William Street Fund, Inc.,

Petitioner-Plaintiff,

—v.—

THE ONE WILLIAM STREET FUND, INC., LEHMAN BROTHERS, a partnership, SIMPSON THACHER & BARTLETT, a partnership, and ALLAN B. HUNTER, PAUL E. MANHEIM, PAUL M. MAZUR and FRANCIS C. REED *et al.*,

Respondents-Defendants.

PETITION FOR REHEARING

WILLIAM LEIGHTON
Petitioner-Plaintiff Pro Se
249 West 11th Street
New York, N. Y. 10014

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Pursuant to Rule 58(2) of the Rules of this Court, petitioner respectfully prays that so much of the Order of April 21, 1969 herein as had denied the petition for certiorari be vacated and that the petition for certiorari be granted for these reasons:

1. Mr. Justice Fortas should not have participated in the consideration of the petition for certiorari.

During the effective period of a stay which the District Court had decreed in this action on November 5, 1964 (Tr.

518-521), the respondent-defendants Lehman Brothers secured from the stockholders of the Fund permission to invest the Fund's assets in the securities of companies in which Lehman Brothers hold directorships, R. 155a-156a. The obvious reason for this was to facilitate the underwriting by Lehman Brothers of new securities issued by such companies. One such company was Federated Department Stores, Inc. ("Federated").

The June 1, 1964 proxy statement of Federated, a company listed on the New York Stock Exchange, states, in pertinent part:

> Mr. Abe Fortas, a director of the Company, is a member of the firm of Arnold, Fortas & Porter, Washington, D. C. and Mr. Dillon Anderson, a director of the Company, is a member of the firm of Baker, Botts, Shepherd & Coates, Houston, Texas, which law firms perform legal services for the Company. Mr. Paul M. Mazur, a director of the Company, is a member of the firm of Lehman Brothers, with which firm the Company from time to time has brokerage transactions in the normal course of business and which firm is retained for economic and investment advisory services.

The April 23, 1965, proxy statement of Federated states, in pertinent part:

> Mr. Abe Fortas, a director of the Company, is a member of the law firm of Arnold, Fortas & Porter, Washington, D. C., which firm, during the fiscal year ended January 30, 1965, was paid the sum of $110,836 for legal services. Mr. Dillon Anderson, a director of the Company, is a member of the law firm of Baker, Botts, Shepherd & Coates, Houston, Texas. These law firms

perform legal services for the Company. Mr. Paul M. Mazur, a director of the Company, is a member of the firm of Lehman Brothers, with which the Company from time to time has brokerage transactions in the normal course of business and which firm is retained for economic and investment advisory services.

The April 26, 1966 proxy statement of Federated states, in pertinent part:

Justice Abe Fortas, who was a director and officer of the Company until October 1, 1965, was, until that date, a member of the law firm of Arnold, Fortas & Porter, Washington, D. C. which firm during the fiscal year to October 1, 1965 was paid the sum of $196,463 for legal services. Mr. Dillon Anderson, a director of the Company, is a member of the law firm of Baker, Botts, Shepherd & Coates, Houston, Texas, which firm during the fiscal year ended January 29, 1966 was paid the sum of $30,950 for legal services. These law firms perform legal services for the Company. Mr. Paul M. Mazur, a director of the Company, is a member of the firm of Lehman Brothers, with which the Company from time to time has brokerage transactions in the normal course of business and which firm is retained for economic and investment advisory services. Lehman Brothers was one of the representatives of the several underwriters in the public offering of $20,000,000 principal amount of 4½% Convertible Debentures, due December 15, 1985, sold by Federated Department Stores International Company, a wholly-owned subsidiary of the Company. Lehman Brothers underwrote $1,650,000 of these Debentures for which it received gross underwriting commissions of $41,250.

Respondents-defendants Lehman Brothers and Paul M. Mazur are in this Court as parties to this proceeding. During the period of time covered by the complaint and prior to October 1, 1965, such respondents-defendants were the business partners of Mr. Justice Fortas in his then capacity as attorney, director and officer of Federated.

Petitioner respectfully submits that elementary fairness required that Mr. Justice Fortas should not have participated in the consideration of a petition for certiorari which challenges the conduct of these respondents-defendants during the period prior to October 1, 1965.

2. The denial of certiorari in this case constitutes manifest injustice when compared with the grant of certiorari in No. 992.

On March 25, 1969, this Court has granted certiorari in No. 992, *Ross* v. *Bernhard et al.* For all practical purposes, the respondents in No. 992 are the same as the respondents here. Respondent Lehman Brothers is a respondent-defendant in both cases. The law firm of Simpson Thacher & Bartlett represents Lehman Brothers in both cases. And, as petitioner has contended in the proposed supplemental complaint, R. 131a *et seq.*, the Lehman Corporation is the *alter ego* of The One William Street Fund, Inc. by reason of the substantial number of identical securities positions carried by both corporations and by reason of their having a common investment adviser, Lehman Brothers. It is for this reason that petitioner moved in the District Court to add The Lehman Corporation as a party to the case at bar. The District Court denied this motion by its order of April 30, 1968, here under review.

The manifest injustice of granting certiorari in No. 992 but of denying it in the case at bar is striking. The peti-

tioner-plaintiff in *Ross* appears to be a phantom whose status as a minor shareholder of The Lehman Corporation is being used by his alleged attorneys, Pomerantz, Levy, Haudek and Block ("Pomerantz") in furtherance of a scheme to exact substantial fees from Lehman Brothers through the device of a settlement. The record here shows that such was the pattern of the 1962 settlement between Pomerantz and Lehman Brothers, see the Amended Partial Complaint, R. 82a *et seq.* This is the pleading which the District Court has struck by its order of April 30, 1968, here under review. In the 1962 settlement, Pomerantz exacted from Lehman Brothers $100,000 as his fee for discontinuing another spurious derivative suit against The One William Street Fund, Inc. which he had caused to be filed in the name of another phantom plaintiff.

Having been successful in 1962, Pomerantz is now pursuing a bolder scheme, that of dragging Lehman Brothers through a jury trial at the conclusion of which, or under the threat of which, Pomerantz would offer to settle for a fee substantially in excess of the fee which he might receive if a jury trial were denied. In order to succeed in this scheme, Pomerantz needs a review by this Court of the substantial constitutional questions decided in *Ross* v. *Bernhard,* 403 F. 2d 909, 910, 915 (2nd Cir., 1969).

Since this Court has granted certiorari in *Ross,* it would appear that, in aid of such jurisdiction, 28 U. S. C. Section 1651(a), certiorari should be granted here because it is only on the basis of this record that Pomerantz and Simpson Thacher & Bartlett can be disciplined and held accountable for the 1962 collusive settlement described in the Amended Partial Complaint. Were Pomerantz and Simpson Thacher & Bartlett so disciplined, there would be no

occasion for this Court to adjudicate the substantial constitutional questions presented by the petition for certiorari in *Ross*.

The petition for rehearing should be granted and a writ of certiorari should issue in aid of this Court's jurisdiction in *Ross*, 28 U. S. C. Section 1651(a).

Respectfully submitted,

WILLIAM LEIGHTON
Petitioner Pro Se

Certificate

Pursuant to Rule 58(2) of the Rules of the Supreme Court of the United States petitioner hereby affirms that this petition for rehearing is based on intervening circumstances of substantial and controlling effect and on grounds not set forth in the petition for certiorari, and that it is presented in good faith and not for delay.

WILLIAM LEIGHTON
Petitioner Pro Se